

Remarks**Preliminary Comments**

Applicant submitted an Information Disclosure Statement on July 20, 2004. In a telephone conversation dated July 29, 2005 applicant's representative confirmed with Examiner Kimberly the Office's receipt of this IDS. Acknowledgement of the Office's review of the cited references is respectfully requested.

Drawings

On page 2, the Office objected to the drawings under 37 CFR §1.83(a) as failing to show a "roll" and the "coupling on each four sides."

In response, applicant submits new Figures 7 and 8 showing a "roll" (Figure 7) and indicating a "coupling on each four sides" (Fig. 8). The Office is referred to page 3, line 37 to page 4, line 10, in particular to page 4, lines 6 to 10 for support. Entry of these new drawings is respectfully requested.

Claim rejections – 35 C.F.R. §112

On page 3, the Office rejected the claims under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, the view was expressed that the phrase "can be" lacks patentability and defines no specific structure and that the recitation in claim 30 of "four sides A, B, C and D" is unclear.

Applicant respectfully submits that the phrase "can be" as used in claims 22, 25, 26 and 30 does not render these claims indefinite. In particular, applicant submits that the terminology defines the patentable subject matter with a reasonable degree of particularity and distinctness (MPEP §2173.02). In addition, applicant submits that a host of patents have issued using the same or closely related phraseology. In particular, applicant refers to claim 24 of Patent No. 6,952,835 ("wherein the server **can** update the plurality of data content"); to claim 9 of Patent No. 6,952,832 ("wherein the

step of actuating a switch includes: unlocking the upper cover so that it *can* be opened with respect to the lower cover") and claim 18 of Patent No. 6,952,825 ("wherein at least one of the first process threads comprises a flag for indicating whether said stop and start function *can* be applied to said thread or not). The above represents a small selection of recently issued patents using similar phraseology. Upon the Office's request, applicant will gladly provide further examples.

Applicant has, as requested by the Office, amended claim 30 to clarify that the "A and B" referred to in this claim corresponds to the "A and B" referred to in claim 25.

Claim Rejections – 35 U.S.C. §102

On pages 3 and 4, the Office rejected claims 15, 16, 22, 24 to 26 and 28 under 35 U.S.C. §102(b) as anticipated by United States Patent 6,512,169 to Santini.

For the sole purpose of advancing the prosecution of this case, applicant has brought elements of claim 17 as well as claim 16 into claim 15. In addition, applicant has introduced the concept that a certain wavelength produces a certain frequency when the instrument is played at a constant tempo. Support for this amendment can be found on page 2, line 19 to 32 and page 3, lines 19 to 21. The rejection under 35 U.S.C. §102(b) of claim 15 over Santini, as well as of amended claims 16, claims 22, 24 which are dependent from claim 15, should therefore be moot.

Claim 25 has been amended to clarify that the module has a surface with a ribbing having wavelengths between 0.001 mm and 250 mm, thus more clearly distinguishing the invention claimed therein as well as the invention claimed in claims 26 and 28, which are dependent from claim 25, from Santini.

On page 4, the Office rejected claim 30 also under 35 U.S.C. §102(b) as anticipated by United States Patent 6,066,025 to Wisniewski et al (hereinafter "Wisniewski").

Claim 25, from which claim 30 is dependent, has been amended as described above. Applicant submits that any modules that Wisniewski might disclose do also not have the ribbing as currently claimed.

Claim Rejections – 35 U.S.C. §103

On pages 4 and 5, the Office rejected claims 17 to 21 and 27 under 35 U.S.C. §103(a) as being obvious over Santini.

While the Office acknowledged that Santini does not disclose the specific wavelength dimensions of these claims, the Office expressed the view that it would have been obvious to the person of ordinary skill in the art to modify the distance between the upper and the lower surface to be no greater than about 1 inch as claimed by applicant since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill. The Office refers to *In re Aller*, 105 USPQ 233.

Applicant respectfully submits that a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977) (see also MPEP §2144.05 II.B).

Claim 15 as amended requires:

"wherein wavelengths of said ribbing are between 0.001 mm and 250 mm and wherein a certain wavelength results in a certain frequency when said instrument is played at a constant tempo."

Santini's disclosure does not contain any indication that any wavelength of a ribbing is a variable that achieves a recognized result, particularly not a certain frequency when said instrument is played at a constant tempo. Applicant therefore submits that in absence of such an indication, no optimum or workable ranges of the wavelengths can be determined by "routine experimentation."

Notably, there is no disclosure in Santini that indicates that Santini is even interested in creating a certain frequency, that is, a sound with a certain pitch.

On page 5, the Office rejected claim 23 under 35 U.S.C. §103(a) as being obvious over Santini in view of United States Patent 4,480,521 to Schmoyer.

While the Office acknowledged that Santini does not disclose the use of frequencies associated with colors, the view is expressed that Schmoyer provides the missing teachings, in particular in column 9, lines 3 to 5.

Claim 15, on which claim 23 depends has been amended. The deficiencies of Santini over claim 15 as amended have been outlined above. Applicant submits that Schmoyer does not cure there deficiencies.

Certain claims have been amended solely to further the prosecution of this case; others have been amended to correct minor grammatical errors (see 28, 30).

Applicant has shown above that independent claim 15 and 25 are novel and nonobvious over the art presented. These claims should therefore in condition for allowances. Claims 16, 18 to 24 and 26 to 32 which are directly or indirectly dependent on these claims should also be allowable.

Accordingly, allowance of this application is earnestly requested.

The Commissioner is authorized to charge any fee deficiencies or overpayments to undersign's deposit account no. 50-3135.

Respectfully submitted,

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Enclosure(s)